

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

MARTIN HAGOPIAN,

Plaintiff,

CIVIL ACTION NO. 05-CV-74025-DT

vs.

DISTRICT JUDGE GEORGE CARAM STEEH

**DAVID SMITH,
et. al,**

MAGISTRATE JUDGE MONA K. MAJZOUB

Defendants.

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OPINION AND ORDER DENYING PLAINTIFF'S MOTION TO AMEND COMPLAINT

This matter comes before the Court on Plaintiff's Motion to Amend his Complaint to add as Defendants the Director of the Michigan Department of Corrections, Patricia Caruso, and Vickie Bybee, Executive Vice President and Chief Operating Officer of Correctional Medical Services, Inc. (Docket no. 96). Plaintiff's Motion to Amend is included in his Response to this Court's Order to Show Cause. (Docket no. 94). Plaintiff's Response to the Order to Show Cause is addressed in a separate Recommendation. All pretrial matters have been referred to the undersigned for decision. (Docket no. 11). The Court dispenses with oral argument on Plaintiff's Motion to Amend his Complaint. Plaintiff's motion is now ready for ruling.

In his Complaint, Plaintiff details the medical care he received while incarcerated in a Michigan prison. (Docket no. 1). He alleges that Defendants failed to properly treat his eye problems which led to blindness in one eye. Plaintiff named the Defendants who allegedly played an active role in these events. It is clear that neither Director Caruso nor Ms. Bybee had such a role in the alleged constitutional violations.

Rule 15(a) provides that a party may amend its pleading once as a matter of course prior to service of a responsive pleading or within twenty days of serving its pleading if no responsive pleading is required. Otherwise, “a party may amend its pleading only with the opposing party’s written consent or the court’s leave. The court should freely give leave when justice so requires.” Fed. R. Civ. P. 15(a)(2). The decision whether to permit amendment is committed to the discretion of the trial court. *Lucas v. Schneider Nat’l Carriers, Inc.*, 953 F.2d 644 (6th Cir. 1992) (unpublished). A motion to amend may be denied when the amendment would be futile. *Haverstick Enters., Inc. v. Financial Fed. Credit, Inc.*, 32 F.3d 989, 995-96 (6th Cir. 1994). There is no liability under 42 U.S.C. § 1983, under which Plaintiff sues, based on the doctrine of respondeat superior. *Street v. Corrections Corp. of America*, 102 F.3d 810, 817-18 (6th Cir. 1996).

Plaintiff has not shown that he received written consent of the opposing party to amend his Complaint; therefore, he must be granted leave by this Court before he may do so. Fed. R. Civ. P. 15(a)(2). Plaintiff seeks to add these Defendants not because they played any active and personal role in the alleged denial of his constitutional rights but because they were responsible for the policies and customs which allegedly harmed Plaintiff and because their employees allegedly violated his rights. (Docket no. 96 at 2). Director Caruso allegedly promulgated policies and procedures such as the prison grievance process and a health care co-payment which supposedly were obstacles to Plaintiff obtaining medical treatment. (Docket no. 96 at 2). Ms. Bybee allegedly circumscribed inmate medical treatment to that which is “appropriate” and required co-payments for clinic visits. (*Id.* at 2-3). Such allegations fail to state a claim for relief against Director Caruso and Ms. Bybee. *McCarty v. Doe*, 2008 WL 2660860 slip copy at *2 (6th Cir. July 7, 2008).

Plaintiff's request to amend his Complaint to add these two Defendants is therefore futile and will be denied on that basis. Plaintiff's request for a medical monitoring program is also without merit.

IT IS THEREFORE ORDERED that Plaintiff's Motion to Amend Complaint (docket no.

96) is **DENIED**.

NOTICE TO THE PARTIES

Pursuant to Fed. R. Civ. P. 72(a), the parties have a period of ten days from the date of this Order within which to file any written appeal to the District Judge as may be permissible under 28 U.S.C. 636(b)(1).

Dated: November 06, 2008

s/ Mona K. Majzoub
MONA K. MAJZOUB
UNITED STATES MAGISTRATE JUDGE

PROOF OF SERVICE

I hereby certify that a copy of this Opinion and Order was served upon Counsel of Record on this date.

Dated: November 06, 2008

s/ Lisa C. Bartlett
Courtroom Deputy